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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 16/2007

April 20, 2007

RAVINDER SINGH ..... Petitioner
Through Mr. Karamveer Singh, Advocate

versus

PARUL SINGH ..... Respondent
Through Mr. Om Prakash Sharma, Mr. Chaman Sharma, Advocates

CORAM:

Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

MR. JUSTICE S. RAVINDRA BHAT(Open Court)

1. The present revision petition is directed against an order of the learned Metropolitan Magistrate dated 15.11.2006. By that order, the court had directed petitioner, a Lt. Commander in the Indian Navy, to pay Rs. 12,000/- per month to the first applicant wife and Rs. 8,000/- to the second applicant, the minor son from the date of the application, namely, 28th May, 2004, as monthly maintenance.

2. It is contended that the impugned order is unsustainable based itself upon the finding that the petitioner earns a monthly salary of Rs. 40,000/-, apart from other perks and that he has no liabilities. Learned counsel submitted that such findings are

unsupported by the facts and that the Court gave credence to the statement of the applicant respondent, as the petitioner was set down ex-parte in the proceedings.

3. It was also contended that the respondent applicant wife is enjoying salary, working in the Pragyan School, Greater Noida. Reliance was placed on the copy of a salary slip for the period of 1.11.2006 to 30.11.2006 for the purpose. Learned counsel took me through the order sheets of the proceedings before the trial court to say that due to default in compliance with an order in January 2006(as he had to pay Rs. 500/- as costs), he was set down ex-parte and that the subsequent application for setting aside the order, though heard, was rejected. It was contended that this caused him considerable hardship. It was contended that the salary and net disposable income of the petitioner was less than Rs. 40,000/- per month.

4. Learned counsel for the respondent resisted the petition and urged and suggested that the contentions raised are not based on facts. It was also urged that the petitioner, though aware of the proceedings, chose to intentionally stay away from them and, therefore, cannot complain of denial of opportunity. Learned counsel alleged that the allegations about the wife enjoying salary or working are not correct. It was submitted that the petitioner has defaulted in making payments, and that in case he wishes to get the order modified, it is always open to him to approach the trial court under Section 127 of the Code of Criminal Procedure.

5. I have gone through the records. I have also considered the certified copies of the order sheets of the trial court. There seems to be some substance in the grievance of the petitioner so far as setting him down ex-parte is concerned. It is an undisputed position

that the petitioner serving as Lt. Commander in Indian Navy and is posted at Kochi. The possibility of his inability to give effective instructions and prosecute the proceedings cannot be entirely ruled out. I am, therefore, of the view that this is an appropriate case where the petitioner should approach the court with an application under Section 127 for an appropriate order.

6. The above observations would not dispose off the petition. In order to balance the equities, I am of the opinion that without expressing any opinion on the merits of the findings, this would be an appropriate case where the petitioner should deposit the balance between the amounts deducted from his salary and the total amount ordered by the impugned order (i.e. the balance Rs. 8,000/- per month) for a period of 1.4.2006 to 31.3.2007 as a condition of remand. The same should be paid to the respondent wife within six weeks from today.

7. In the light of the above discussion, the following directions are issued:

(i) Payment equivalent to Rs. 8,000/- per month for the period 1.4.2006 to 31.3.2007 shall be made to the respondents within six weeks by the petitioner;

(ii) The petitioner is at liberty to approach the trial court for variation of the impugned order by moving an appropriate application under Section 127 within four weeks from today. In such an eventuality, the trial court shall deal with the same and dispose off the same on merits within six months of its presentation in accordance with law after issuing notice to the respondent and granting due opportunities to all the parties.

(iii) Subject to the above, the operation of the impugned order is suspended for a

period of six months till the final order is made by the trial court.

8. The petition is disposed off in the above terms.
Order Dasti.

S.RAVINDRA BHAT, J

APRIL 20, 2007
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